

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 631 - HB 1054

January 22, 2024

SUMMARY OF BILL AS AMENDED (011782): Removes certain wetland property from applicable standards under the *Water Quality Control Act*.

FISCAL IMPACT OF BILL AS AMENDED:

Decrease State Revenue –

\$161,500/FY24-25 and Subsequent Years/Environmental Protection Fund

Other Fiscal Impact - The net impact on the total number of pre- and post-permitting site visits and the workload of the Division of Water Resources cannot reasonably be determined due to a number of uncertainties. The resulting net impact on division expenditures is unknown.

This legislation may result in an increase in aquatic resource alteration permit fees through rulemaking in future years. The timing and extent of any such increase and the impact on total fee revenue cannot be reasonably determined.

Assumptions for the bill as amended:

- This legislation removes isolated wetlands from the definition of “waters”, which are wetlands that are not defined as navigable water by 33 U.S.C. § 1362(7) of the federal *Water Pollution Control Act* (Act) or are not otherwise regulated under subchapter IV of the Act (33 U.S.C. § 1381 et seq.).
- This legislation also removes an ephemeral watercourse that is a wet weather conveyance regardless of whether such ephemeral watercourse is defined as navigable waters by 33 USC § 1362(7) of the Act or is otherwise regulated under subchapter IV of the Act (33 U.S.C. § 1381 et seq.) from the definition of “stream”.
- The Department of Environment and Conservation (TDEC) Division of Water Resources (Division) issues aquatic resource alteration permits (ARAP), which require controlled mitigation to offset wetland impacts.
- Based on information provided by TDEC, tying these aforementioned definitions to those in federal statute will present a more complex set of criteria on how to adjudge jurisdictional status of isolated wetlands and streams, as they change frequently. Due to various uncertainties, it is difficult to determine the exact fiscal impact to costs associated with such visits.

- Based on information from the United States Geological Survey's *National Water Summary on Wetland Resources*, there are approximately 787,000 acres of wetland in Tennessee.
- Based on information from TDEC, this legislation will result in a 55 percent decrease in currently protected wetlands, or approximately 432,850 acres (787,000 x 55%).
- This loss in protected wetlands will result in less ARAPs issued annually from the Division and subsequently, a loss in permitting revenue to the Environmental Protection Fund (EPF).
- In 2023, TDEC issued 140 general ARAPs and 74 individual ARAPs.
- There will be 55 percent decrease in the number of general ARAPs issued, or approximately 77 permits (140 x 55%), and a 55 percent decrease in the number of individual ARAPs issued, or approximately 41 permits (74 x 55%).
- General ARAPs cost \$500; therefore, there will be a recurring decrease in state revenue to the EPF of \$38,500 (77 x \$500).
- Individual ARAPs fees vary from \$50 up to \$5,000.
- Based on information from TDEC, individual ARAPs generally cost \$5,000 or \$2,500 at a 20/80 ratio.
- There will a recurring decrease in state revenue of individual ARAP fees of \$123,000 [(41 x 20% x \$5,000) + (41 x 80% x \$2,500)] to the EPF.
- There will be a total recurring decrease in state revenue to the EPF of \$161,500 (\$38,500 + \$123,000) in FY24-25 and subsequent years.
- According to TDEC, the loss of revenue will not result in immediate changes to fees charged in order to remain self-supporting. Should expenditures increase, the fee structure may need to be altered in future years through rule making.
- This decrease in permit issuances will result in a loss in total post-permitting site visits needed, in aggregate, compared with the number of site visits necessary in lieu of this legislation. The exact decrease in such site visits cannot be determined with reasonable certainty.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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